

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RODGER A. GRIFFIN,  
  
Petitioner,  
  
vs.  
  
OZZIE D. KNEZOVICH,  
  
Respondent.

NO. CV-11-146-JPH

**ORDER ADOPTING REPORT AND  
RECOMMENDATION AND DISMISSING  
FIRST AMENDED PETITION**

BEFORE THE COURT is Petitioner's "Objection to Recommendation to Dismiss First Amended Petition." ECF No. 20. Petitioner, a prisoner at the Spokane County Jail, is proceeding *pro se* and in *forma pauperis*; Respondent has not been served.

Mr. Griffin asserted in his First Amended Petition that he was challenging a fugitive warrant issued out of Spokane County, Washington, on April 26, 2010, cause number 10-1-01213-4. On that date, Petitioner was incarcerated at the Spokane County Jail on Washington state charges for which he was arrested in September 2009.

In his Objection, Petitioner asserts Washington commenced extradition to Montana when he signed a "waiver of extradition" on April 25, 2010. ECF No. 20-1. On April 26, 2010, Spokane County issued the above mentioned fugitive warrant, ECF No. 20-3, based on a December 2009

1 Montana Bench Warrant for probation violations. ECF No. 20-2.

2       Petitioner contends he had "bonded on local charges," on April 26,  
3 2010, although it does not appear he was actually released from jail at  
4 that time. He asserts, after the fugitive warrant was issued, "bail was  
5 revoked." The Spokane County "fugitive information" was then  
6 "dismissed" on July 28, 2010, as no Governor's warrant had issued. ECF  
7 No. 20-4. Petitioner presents no facts showing extradition proceedings  
8 have re-commenced.

9       On June 8, 2011, Magistrate Judge Hutton instructed Mr. Griffin to  
10 amend his original petition. The information Petitioner had submitted  
11 was confused, there was no statement of facts, and it did not appear  
12 Petitioner had exhausted state court remedies regarding any out of state  
13 detainer lodged against him. Furthermore, it did not appear Montana had  
14 actively sought to have Petitioner "delivered over" under the Uniform  
15 Criminal Extradition Act (UCEA), RCW § 10.88.

16       On August 11, 2011, Magistrate Judge Hutton recommended dismissal  
17 of the First Amended Petition because Mr. Griffin is facing charges in  
18 Spokane County and any challenge to extradition (which did not appear to  
19 have commenced) would be premature. Although Mr. Griffin asserts the  
20 Washington commenced extradition to Montana when he signed a "waiver of  
21 extradition" on April 25, 2010, any extradition proceedings appear to  
22 have ceased with the dismissal of the "fugitive information" on July 28,  
23 2010. Petitioner's contention the Washington lost jurisdiction to hold  
24 and extradite him at that time is misplaced.

25       Extradition laws relate to the duty of the states to deliver up  
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1 fugitives upon proper demand. *White v. King Cy.*, 109 Wash.2d 777, 748  
2 P.2d 616 (1988). The alleged fugitive's rights are limited to testing  
3 the validity of an arrest based on extradition law. *Id.* at 780-81. As  
4 stated earlier, Petitioner was already incarcerated when the fugitive  
5 warrant was issued on April 26, 2010. He does not claim he was arrested  
6 upon that warrant or wished to challenge the legality of any arrest  
7 based on the fugitive warrant. See RCW 10.88.290.

8 The fact the executive authorities of Montana and/or Washington  
9 did not perfect Mr. Griffin's extradition after April 26, 2010, does not  
10 deprive Washington of the authority to hold Petitioner. Because of the  
11 pending criminal prosecutions in Washington, Petitioner may be held  
12 until he has been tried and discharged or convinced and punished in  
13 Washington. See RCW 10.88.380. Furthermore, executive authorities may  
14 issue another warrant whenever they deem proper. RCW 10.88.390.

15 Petitioner has presented no challenge to the validity of any  
16 extradition papers and has made no showing that relief is unobtainable  
17 from the courts of the demanding state. *State ex rel. Boutwell v.*  
18 *Coughlin*, 90 Wn.2d 835, 586 P.2d 1145 (1978). Petitioner presents no  
19 facts showing Montana is seeking his immediate temporary custody under  
20 the Interstate Agreement on Detainers, or that he has exhausted remedies  
21 in the State of Montana. At this time, Mr. Griffin is not entitled to  
22 federal habeas relief regarding extradition. Rule 4, Rules Governing  
23 Section 2254 Cases in the United States District Courts.

24 To the extent Mr. Griffin asserts his present detention is a  
25 violation of the Eighth Amendment prohibition against excessive bail,  
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1 the *Younger* abstention doctrine requires dismissal. A federal court  
2 must not interfere with ongoing state criminal proceedings by granting  
3 injunctive or declaratory relief except under special circumstances,  
4 which are not present here. See *Younger v. Harris*, 401 U.S. 37, 46,  
5 53-54 (1971)(cost, anxiety and inconvenience of criminal defense is not  
6 the kind of special circumstances or irreparable harm that would justify  
7 federal court intervention); *Samuels v. Mackell*, 401 U.S. 66 (1971).

8 Petitioner admits there are ongoing criminal proceedings in the  
9 State of Washington which implicate important state interests (i.e.,  
10 theft and check fraud). *Younger*, 401 U.S. at 43-44. Petitioner has an  
11 "adequate" or "full and fair" opportunity to raise any Eighth Amendment  
12 claims regarding excessive bail or the denial of bond in an appropriate  
13 state court proceeding. *Dubinka v. Judges of the Superior Ct.*, 23 F.3d  
14 218, 224-25 (9th Cir. 1994). Petitioner has not shown "bad faith,  
15 harassment, or some other extraordinary circumstance that would make  
16 abstention inappropriate." *Middlesex County Ethics Comm. v. Garden State*  
17 *Bar Ass'n*, 457 U.S. 423, 435, 102 S.Ct. 2515, 73 L.Ed.2d 116 (1982); see  
18 *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 621 (9th Cir. 2003).  
19 Accordingly, there is no basis on which a federal district court should  
20 interfere with state criminal proceedings

21 To the extent Mr. Griffin makes a renewed request for the  
22 appointment of counsel, his request is **DENIED** for the reasons set forth  
23 in the magistrate judge's previous Order denying Motion for Appointment  
24 of Counsel. ECF No. 11.

25 After review of Petitioner's submissions, and being fully informed  
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1 in this matter, **IT IS ORDERED** the Report and Recommendation, ECF No. 18,  
2 is **ADOPTED in its entirety** and the First Amended Petition, ECF No. 15,  
3 is **DISMISSED without prejudice** to seeking appropriate remedies in the  
4 state courts of Washington and Montana.

5 **IT IS SO ORDERED.** The District Court Executive is directed to  
6 enter this Order and enter judgment. The District Court Executive  
7 shall reserve closing the file until Petitioner's pending motion for  
8 injunctive relief has been addressed. This Court certifies, pursuant to  
9 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken  
10 in good faith, and there is no basis upon which to issue a certificate  
11 of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

12 **DATED** this 16<sup>th</sup> day of September 2011.

13  
14 S/ Edward F. Shea  
15 EDWARD F. SHEA  
16 UNITED STATES DISTRICT JUDGE

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